NO. 48590-7-II

STATE OF WASHINGTON COURT OF APPEALS FOR DIVISION II

JOHN WORTHINGTON,

Appellant

v.

WESTNET,

Respondents

APPELLANT'S REPLY BRIEF

ORAL ARGUMENT REQUESTED

John Worthington
4500 SE 2ND PL.
Renton WA.98059

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I. INTRODUCTION

Kitsap County, has been allowed to defend WestNET, an entity it claimed it could not represent, rather than intervene as Kitsap County.

The two main questions asked by the Washington State Supreme Court to be determined on remand has been answered. Worthington has presented overwhelming evidence in support of his argument that WestNET's actual operational structure of a Washington State agency, subjects it to the PRA's purview outright.

The trial court abused its discretion when it ruled against that evidence, and defied the Washington State Supreme Court ruling by resorting back to the self-imposed interlocal agreement, letting it govern the PRA, and avoiding the PRA requirements for an agency.

Worthington proved WestNET did not behave consistently with its nonentity designation, by showing WestNET had sent records from its own filing cabinet in its own separate "headquarters."[1] Worthington also proved WestNET was a legal entity when it appeared in a previous PRA case in Pierce County and asked the court to dismiss that case and was granted relief. Worthington proved it again when he showed WestNET appeared in four separate court venues to seize cash and

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[1] **CP 824, CP 912, CP 916, CP 1153.** Kitsap County Sheriff's Office only provided redactions. **CP-835**

property and after he showed prosecutors in three WestNET jurisdictions requested three courts to approve court judgments for fines and fees to be paid to WestNET. WestNET's legal status was further cemented by the fact the courts sent checks that said "pay to the order of WestNET." WestNET nailed the coffin shut when they cashed those checks. Furthermore, WestNET was judicially and collaterally estopped from arguing it was not a legal entity, because courts determined they legally existed. Even the same court that has now ruled they do not exist, signed orders and collected money for WestNET, not the component entities.

Worthington has proven WestNET existed as a separate state agency[2] such that it should be subject to the broad scope of the PRA and its provisions. There was no way for Kitsap County to comply with the PRA, because the interlocal agreement does not have PRA procedures, it had no third party releases, and the County had contracted out control of its WestNET personnel and records created to the Washington State Patrol, who had command and control and could acquire the drug task force records of the NCIS under RCW 43.43.620 and RCW 43.43.655.

Having affirmatively answered the first question posed by the Washington Supreme Court, Worthington should have prevailed on his

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[2] WestNET admitted it was an agency on November 18, 2015. Partial VR November 18, 2015, Partial **VR 3-7.**

motion for summary judgment and the summary judgment of WestNET should have been denied, because the trial court ruling was not supported by the evidence Worthington provided.

The trial court ruling was untenable and manifestly unreasonable, because WestNET fell within the ambit of the PRA, when Kitsap County admitted WestNET was an Agency and because WestNET left a decade long trail of court seizure forfeiture appearances, fee and fine collections in the name of WestNET, while under control of the WSP by contract.

The trial court abused its discretion because the evidence does not support the ruling WestNET is a non-entity and that WestNET is under the Kitsap County Umbrella. The trial court then erred by failing to give effect to the plain meaning of the PRA on the State agency WestNET.

The case should be remanded to the trial court with orders to proceed to the penalty phase of the PRA on WestNET the state agency.

II. REPLY ARGUMENT

A. The trial court erred when it ruled WestNET was not a state agency for the purposes of the PRA outright.

The trial court erred when it ruled WestNET was effectively Kitsap County and under the umbrella of Kitsap County, based on the theory that a Kitsap County employee answered Worthington's record request.

Worthington's motion to reconsider provided proof of WestNET agency activity as a separate legal entity that could appear in court as WestNET to seize and forfeit property, collect court fines and fees, and get checks written to WestNET. WestNET cashed those checks to complete a cycle of legal capacity. The evidence Worthington provided in his motion to reconsider and the follow up RPC 3.3 hearing, clearly demonstrated that WestNET conducted seizure and forfeiture as an independent entity and not as member agencies. This independent agency should have been able to process Worthington's PRA request in the same manner in which it conducted its independent seizure and forfeiture process. Criminal defendants were not required to notify all **component entities** in order to defend themselves against criminal charges, nor was it required of them to notify all WestNET jurisdictions when they sought civil remedies to contest seizure forfeitures. The same should have applied to Worthington's PRA request, which was handled by the same administrative mechanism that handled WestNET seizure forfeitures, while under the command and control of the WSP, not Kitsap County.

The minority in Worthington v. WestNET reasoned: "Courts in this

state have used **Roth's** [3] enabling-statute analysis to determine if a government body named as a defendant is a separate legal entity with capacity. Those courts have concluded "no" with respect to boards of county commissioners, the Snohomish County Council, the Pierce County Prosecuting Attorney's Office, the Pierce County Department of Assigned Counsel, the Mason County Jail, and the Seattle Public Library. None of the enabling statutes for these bodies created separate legal entities, and in each case the proper defendants were the counties or, as to the library, the city of Seattle." **However**, none of those cases are instructive because the entities in ***Roth*** and the other cases relied upon by the minority, did not appear in court proceedings as the entity in question and they did not create a decade long trail of separate financial activity in the name of the entity, rather than in the name of the county, or city. **Here**, WestNET's independent actions, speak so loud it is impossible to hear the factors in ***Roth.*** WestNET created a legal capacity in order to sue and collect money. The Majority's decision to seek additional discovery rather than just rely on a statute or interlocal agreement ***was proper.*** The evidence of WestNET activity was clearly contrary to the language of both the interlocal cooperation Act and the interlocal agreement. The minority

[3] Roth v. Drainage Improvement District No. 5, 64 Wash.2d 586, 589–90, 392 P.2d 1012 (1964),

opinion to consider just those factors without considering the WSP grant and the actual function of WestNET, ***would have been a manifest error***. The minority did not consider the current evidence of WestNET legal capacity and could not see WestNET's administrative process that actually responded to Worthington's request by fax to the Kitsap County Sheriff.

WestNET failed to illustrate it was operating in the same manner as the entities identified in ***Roth***. The evidence Kitsap County used to convince the trial court that the seizure forfeiture process was a Kitsap County process, misrepresented the forms as Kitsap County forms signed by Kitsap County employees, when the signatures alluded to were the signatures of the Washington State Patrolmen assigned to WestNET to supervise the drug task force. **CP 1125-1126, CP 808-822, CP 2134-2430.**

The evidence most fatal to Kitsap County's argument, was the physical appearances by WestNET in court, and the lack of any court captions listing Kitsap County as a litigant.[4] The nail in the coffin for Kitsap County's argument that WestNET was under a "Kitsap County umbrella", was the the acceptance of checks written to WestNET by banks and courts, and the fact that those checks were cashed and not sent back to be written in the name of Kitsap County or any component entity.

[4] WestNET, (Kitsap County) failed to provide one court case with Kitsap County in the caption.

CP 1208-1241. Worthington proved that the records he had already obtained were faxed from WestNET "headquarters" to Kitsap County. The other member agencies of WestNET could have answered Worthington's requests in a previous Pierce County PRA case [5], but they all chose to join WestNET in arguing WestNET was not a legal entity, while all of them knew WestNET was appearing in court asking for seizure forfeitures, appearing in court to request fines and fees as WestNET, and then cashing checks written to WestNET.

Appellate courts review an order denying a motion for reconsideration according to the abuse of discretion standard: "A motion for reconsideration and motion to vacate a dismissal are to be decided by the trial court in exercise of its discretion and its decision will be overturned only if the court abused its discretion." Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). **The** trial court abused its discretion when it failed to rule WestNET was subject to the PRA outright when it was shown to the trial Court that WestNET was a drug enforcement agency[6] under the command

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[5] Case # 11-2-13236-1. Requests were attached to the complaint. (Worthington did sue component members)

and control of the Washington State Patrol participation grant.

" The decision to grant or deny a motion for reconsideration for abuse of discretion." Drake v. Smersh, 122 Wn. App. 147, 151, 89 P.3d 726 (2004). "Discretionary determination should not be disturbed on appeal except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494,933 P.2d 1036 (1997). "A trial court abuses its discretion only if its decision is manifestly unreasonable or rests on untenable grounds or reasons." In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). "An abuse of discretion exists only if no reasonable person would have taken the view adopted by the trial court." Holaday v. Merceri, 49 Wn. App. 321, 324, 742 P.2d 127, review denied, 108 Wn.2d 1035(1987).

After it was admitted in open court that WestNET was indeed an agency, any reasonable person not convinced already by the hundreds of WestNET checks and court appearances would not have taken the view of

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[6] WestNET admitted it was an agency but the court still reasoned it was an action against Kitsap County.

the trial court. The trial court should be reversed on all orders. "When construing statutes, the goal is to ascertain and effectuate legislative intent." Bylsma v. Burger King Corp., 176 Wash.2d 555,558, 293 P.3d 1168 (2013); Dep't of Ecology v. Campbell & Gwinn,LLC, 146 Wash.2d 1, 9, 43 P.3d 4 (2002). "In determining legislative intent, we begin with the language used to determine if the statute's meaning is plain from the words used and if so we give effect to this plain meaning as the expression of legislative intent." Manary v.Anderson, 176 Wash.2d 342, 350, 292 P.3d 96 (2013); Campbell &Gwinn, 146 Wash.2d at 9, 43 P.3d 4. The plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." Campbell & Gwinn, 146 Wash.2d at 11,43 P.3d 4. Because "'plain language does not require construction," we need not consider outside sources if a statute is unambiguous." State v. Delgado, 148 Wn.2d 723, 727,63 P.3d 792 (2003) (quoting State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)). Plain meaning standard in Washington State. (See, e.g., Davis v. Dep't of Licensing, 137 Wash. 2d 957, 964, 977 P.2d 554, 556 (1999). See also State v. Enstone, 137 Wash.

2d 675, 680, 974 P.2d 828, 830 (1999); State v. Chapman, 140 Wash. 2d 436,998 P.2d 282 (2000); Hendrickson v. State, 140 Wash. 2d 686,2 P.3d 473 (2000). **Here,** the trial court erred when it failed to give effect to the unambiguous and plain meaning of RCW 42.56.010, the definitions section of the PRA.RCW 42.56.010, clearly states that "**all state and local agencies**" are subject to the PRA. The trial court also erred when it failed to give effect to the unambiguous and plain meaning of RCW 42.56.580. RCW 42.45.580 reads in relevant part:

> "**shall** appoint and publicly identify a public records officer whose responsibility is to serve as a point of contact for members of the public in requesting disclosure of public records and to oversee the agency's compliance with the public records disclosure requirements of this chapter."

The trial court also erred when it failed to give effect to the unambiguous and plain meaning of RCW 42.56.040 (1) which reads in relevant part:

> "**Each state agency shall** separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public"

The trial court also erred when it failed to give effect to the unambiguous and plain meaning of RCW 42.56.040 (2) which reads in relevant part:

> Except to the extent that he or she has actual and timely notice of the terms thereof, a **person may not** in any manner **be**

> **required to resort to,** or be adversely affected by, a matter required to be published or displayed and not so published or displayed.

Here, the trial court also erred ignoring the statutory requirements to publish WestNET public record procedures, and also ignored the statute that was intended to require published or prominently displayed public records procedures. This error required Worthington to resort to unpublished WestNET public records procedures and adversely affected Worthington by subjecting him to those procedures 6 years after the fact. WestNET was allowed to violate this statute, and the trial court erred by failing to give effect to the unambiguous and plain meaning to that statute.

If the plain language of a statute is subject to only one interpretation, then our inquiry ends. State v. Armendariz, 160 Wn.2d106, 110, 156 P.3d 201 (2007) (citing State v. J.P., 149 Wn.2d 444,450, 69 P.3d 318 (2003)). Here, there is only one interpretation of both requirements, and the trial court erred when it failed to uphold the requirements of the PRA.

The trial court also erred by rendering RCW 42.56.010, RCW 42.56.580, and RCW 42.56.040 useless or superfluous. Generally, the Washington State Supreme Court interprets statutes so that all language is given effect with no portion rendered meaningless or superfluous.(See City Of Seattle v. State, l36 Wn.2d 693 (1998).) "Statutes must be interpreted and construed so that all the language used is given effect, with

no portion rendered meaningless or superfluous. "Whatcom County v. City of Bellingham, 128 Wash.2d 537,546,909 P.2d 1303 (1996). The rulings in this case are in conflict with several Washington State Supreme Court rulings on rendering portions of statutes meaningless or Superfluous and the trial court erred when it did so.

B. **The trial court erred when it ruled Kitsap County was the party of interest.**

In Worthington's motion to reconsider, Worthington asserted that Washington State was the proper party of interest in this case because the Washington State Patrol supervised WestNET under the Washington State Patrol participation grant. **CP 727** Kathy Chittenden, the Kitsap County employee that WestNET relies upon to argue it was a Kitsap County public records process, was under the command and control of the WSP by contract. When Kitsap County signed the WSP participation grant contract, Chittenden became a "borrowed servant" or "loaned employee" to the WSP. The liability for any damages created by the alleged failure of Chittenden to act cannot be imputed to any other of the WestNET jurisdictions because WSP was the special employer. When a general employer loans his employee to a borrowing or special employer, the employee becomes the "borrowed servant" of the special employer in his

performance of a particular transaction. Stocker v. Shell Oil Co., 105 Wn.2d 546, 716 P.2d 306, *reconsideration denied* (1986). Additionally:

> [0]ne who is in the general employ and pay of one person may be loaned or hired, by his employer to another, and, when he undertakes to do the work of the other he becomes the servant of such other, to perform the particular transaction.

C.F. Lytle Co. v. Hansen & Rowland, 151 F.2d 573, 575 (9th Cir. 1945); Davis v. Early Const. Co., 63 Wn.2d 252,257-258,386 P.2d 958 (1963).

Here, Chittenden was a servant to Carlos Rodriguez of the Washington State Patrol by contract to perform tasks for WestNET, and performed the transaction at dispute. (**CP 174-181***)* "For an employee to be acting in the course of employment, the employee must be acting at his employer's direction, or in furtherance of his employer's business." DLI v. Johnson, 84 Wn. App. 275, 928 P.2d 1138 (1996); Lunz v. DLL 50 Wn.2d 273, P.2d 880 (1957). "An employment relationship exists only when (1) the employer has the right to control the servant's physical conduct in the performance of his duties, and (2) there is consent by the employee to this relationship." Bennerstrom v. DLL 120 Wn. App. 853, 86 P.3d 826 (2004); Novenson v. Spokane Culvert & Fabricating Co., 91 Wn.2d 550, 588 P.2d 1174 (1979) (emphasis added). "A mutual agreement must exist

between the employee and employer to establish a relationship." Novenson, supra, at 553. Novenson v. Spokane Culvert & Fabricating Co., 91 Wn.2d 550, 588 P.2d 1174 (1979) (emphasis added).

The WSP participation grant was that mutual contract controlling loaned state employees and borrowed servants, operating as a separate legal entity and agency of the State of Washington[7] for criminal and civil cases, the State of Washington[8] was the party of interest not Kitsap County. **CP 545, CP 544-578, CP 1170-1180**

Appellate courts review an order denying a motion for reconsideration according to the abuse of discretion standard: "A motion for reconsideration and motion to vacate a dismissal are to be decided by the trial court in exercise of its discretion and its decision will be overturned only if the court abused its discretion." Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). **The** trial court abused its discretion when it failed to rule the State of Washington was the real party of interest[9] and ruled the party of

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[7] There are only 6 multi-jurisdictional drug task forces supervised by the WSP (**CP 576**) under the WSP participation grant. WestNET is one of these. Other drug task forces insert the WSP under the local jurisdiction. Those task forces would be considered local "board", "local" or "other local public agencies" under the PRA.

[8] Worthington v. WSP 08-2-0198 (2008), 386976-II.

interest was Kitsap County. The trial court erred by not requiring Kitsap County to intervene.“ The decision to grant or deny a motion for reconsideration for abuse of discretion.” Drake v. Smersh, 122 Wn. App. 147, 151, 89 P.3d 726 (2004). "[D]iscretionary determination should not be disturbed on appeal except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494,933 P.2d 1036 (1997). “A trial court abuses its discretion only if its decision is manifestly unreasonable or rests on untenable grounds or reasons.” In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). “An abuse of discretion exists only if no reasonable person would have taken the view adopted by the trial court.” Holaday v. Merceri, 49 Wn. App. 321, 324, 742 P.2d 127, review denied, 108 Wn.2d 1035(1987). **Since** the records Worthington requested were faxed from Kathy Chittenden[10] to the Kitsap County Sheriff's office from WestNET headquarters, the record clearly showed the acts of a borrowed servant and loaned employee to a WSP participation grant (special employer), performing the transaction at dispute. The trial court erred when it ruled

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[9] Also alleged in the Motion to reconsider.
[10] **CP 217, CP 213-227, CP 836-889.**

this was an act under the "Kitsap County umbrella." This action was a WestNET action, identical to the WestNET seizure forfeiture trail.

The trial court's ruling was manifestly unreasonable and untenable. On the one hand it ruled WestNET was under the Kitsap County umbrella, on the other it ruled Kitsap County did not have to intervene in the case to defend its entity based on the language of interlocal agreement.[11] The trial court ruling is untenable and manifestly unreasonable, because Kitsap County joined the WSP grant and agreed to be under the command and control of the WSP .[12] This is supported by the drug task force manuals, and operational paper trial showing the WSP signing all documents and supervising all WestNET personnel. **CP 835-903**

The record shows that Kitsap County conceded authority to the Washington State Patrol, and in fact, could not provide NCIS records to a requestor.[13] The Washington State Patrol ran WestNET and the evidence

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[11] The Supreme Court ruled, could not rely on the language of the interlocal agreement.

[12] **CP 545, CP 544-578, CP 633 CP 1170-1180.**

[13] **CP 33** "Should you find it necessary for Risk Management and/or anyone else to review the documents, please contact **me first**. If this matter actually reaches a point where the documents must be released to Risk Management and/or Mr. Worthington's attorney, there is a procedure that **MUST** be followed for them to obtain the paperwork associated to Naval Criminal Intelligence Service (N.C.I.S.)."

supports that conclusion. The WSP instructed the Office of Financial Management to contact the WSP supervisor of WestNET first to get NCIS Records, not Kitsap County. The trial court's ruling should be reversed.

C. The trial court erred when it allowed the Kitsap County Prosecutor's office to represent WestNET.

Worthington did not waive the argument that Kitsap County could not represent WestNET. In Worthington's motion to reconsider, Worthington argued that WestNET was estopped from arguing it could be represented by Kitsap County. **CP 727** Even if Worthington did not specify judicial estoppel, the issue was brought up and not waived. Furthermore this court has discretion to consider it. "Court invokes judicial estoppel at its discretion" (See Yanez v. United States, 989 F.2d 323, 326 (9th Cir. 1993). **The** trial court erred when it failed to rule Kitsap County was barred by judicial estoppel from changing its previous legal position it could not represent WestNET. ."Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." Bartley- Williams v. Kendall, 134 Wn. App. 95, 98, 138 P. 3d 1103 (2006). "Courts consider whether the earlier position was

accepted by the court, and whether assertion of the inconsistent position results in an unfair advantage or detriment to the opposing party." Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538 -39, 160 P.3d 13 (2007). Three core factors guide a trial court's determination of whether to apply the judicial estoppel doctrine: (1) whether a party's later position is "clearly inconsistent" with its earlier position; (2) whether judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. These factors are not an exhaustive formula and additional considerations may guide a court's decision. Application of the doctrine may be inappropriate when a party's prior position was based on inadvertence or mistake. (See Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 536, 160 P.3d 13, 14, (Wash. 2007). **The** trial court abused its discretion when it ruled Kitsap County could represent WestNET and be the party of interest without intervening.

D. The trial court erred when it failed to bar WestNET from claiming it was not a legal entity under the doctrines of judicial, collateral estoppel, res judicata and horizontal stare decisis.

The trial court erred when it failed to correctly rule WestNET was

barred under judicial collateral estopped, res judicata and by horizontal stare decisis, from claiming it was not a legal entity, after appearing and requesting relief in the Pierce County case. In the request for relief, WestNET requested the Pierce County Superior court to consider the CR 12(b) (6) motion first, and then add WestNET to the transfer to another venue "**if** the court does not dismiss WestNET from the case," all in the same motion as shown below:

> An Order Granting Defendant WestNET's CR 12(b) (6) motion for dismissal of Plaintiffs claims against it, thereby dismissing all claims against the WestNET with prejudice. This motion is based upon the records and files herein, CR12 (b) (6) and the authority set forth below; (CP 94)

WestNET then requested the following relief in the second part of the motion:

> ***If*** *this Court declines to grant Defendant WestNET's motion tor dismissal.* WestNET ioins in co-defendant State of Washington, City of Poulsbo and City of Bremerton's motions for transfer of venue to Kitsap County Superior Court, and for imposition of costs and fees, including reasonable attorney's fees; and (CP 94)

WestNET states the same thing later in the motion:

> ***If*** *this Court were to deny WestNET's CR 12(b) (6) Motion for Dismissal.* WestNET joins in its co-defendants' motions for transfer of venue to Kitsap County. (CP 97)

In the conclusion of the motion WestNET states:

> ***Alternatively, if*** WestNET's motion for dismissal is not granted, venue in this action should be transferred to Kitsap County. (CP 99)

As shown above, WestNET requested to be added to the motion to transfer venue only, "If.. this Court were to deny WestNET's CR 12(b)(6) Motion for Dismissal", and then only ***if alternatively,*** WestNET's motion for dismissal is not granted." WestNET left the trial court with no choice but to consider and rule on the 12 (b) (6) motion, before the court could add them to the change of venue motion. Kitsap County misleads both courts about the truth of the Pierce County court decision. Furthermore, in the Pierce County Superior court order, the only issue left on the table to be determined by Kitsap County Superior Court, besides the PRA allegations, was the issue of legal fees, not the issue of whether WestNET was a legal entity subject to suit after they showed up in that suit. **CP101**

The Motion to dismiss was ***"declined'*** , and the court ***"joined"***.. *WestNET to the change of Venue filed by the other parties.* Kitsap County misled both courts about the truth of the Pierce County court decision and already leads the league in misstatements of facts requiring RPC 3.3 and RPC 5.1 filings. The trial court erred when it ruled the previous Pierce County Superior court judge did not decide WestNET existed in the 12 b 6 Motion to dismiss and when it failed to bar WestNET from arguing it was

not a legal entity subject to suit. Any reasonable person could see the motions were drawn to require a ruling on the motion to dismiss issues before deciding the change of venue issues. The ruling was untenable and manifestly unreasonable and outside of the range of acceptable choices. "Abuse of discretion occurs where the trial court's decision rests on untenable grounds or untenable reasons." Kleyer v. Harborview Med. Ctr., 76 Wash.App. 542, 545, 887 P.2d 468 (1995). "A court's decision is manifestly unreasonable if it is 1.) Outside of the range of acceptable choices, given the facts and the applicable legal standard; 2.) if the factual findings are unsupported by the record; 3.) it is based upon an incorrect standard or the facts do not meet the requirements of the correct standard." In re Marriage of Littlefield, 133 Wn. 2d, 39, 47, 940 P. 2d 1362 1997).

If it was not decided that WestNET did not exist, then why add them as a defendant and allow them legal fees. The trial court had no choice but to rule they legally existed before making them a defendant, before adding them to the motion for change of venue, and before awarding legal fees.

E. Kitsap County is judicially and collaterally estopped from claiming Case #14-2-00474-7 has any bearing on this case.

The trial court erred when it ruled case #14-2-00474-7 estopped Worthington in this case. Twice, in briefings to this court, in COA Division II case # 463644, Kitsap County has argued that case #14-2-

00474-7 had different parties and issues, and had no bearing on this case.

On April 7, 2015 Kitsap County briefed to this court the following:

> Because the two cases do not share the same parties, and do not share the same legal issues, the decision of the Supreme Court in 90037-0 has minimal relevance to the pending appeal.

On February 29, 2016, Kitsap County briefed to this court and stated the following:

> The two cases that are sought to be combined share neither identity of issues nor parties.

A panel of COA judges agreed. Worthington requests the COA to take judicial notice of these pleadings and judgments. ER 201 (d). Courts routinely take judicial notice of pleadings, records and judgments in other court cases [see, e.g., Green v. Warden, U.S. Penitentiary, 699 F.2d 364, 369 [7th Cir. 1983]; E.I. du Pont de Nemours & Co. Inc. v. Cullen, *791 F.2d 5, 7* [1st Cir. 1986]. Washington Water Jet Workers Ass 'n *v.* Yarbrough, 15 1 Wn.2d 470, 476, 90 P.3d 42 (2004). Because Kitsap County has argued in this case it is proceeding as Kitsap County to protect a Kitsap County public records process, and has alleged it is allowed to do so without intervening, Kitsap County is judicially estopped from arguing case #14-2-00474-7, can estopp Worthington from arguing Kitsap County

is subject to the PRA.[14] In the alternative, WestNET argued the issue and the two parties and issues are different and cannot estopp Worthington in this case. Ione George has argued the case did not share the same parties or legal issues, and is now judicially estopped from claiming that case #14-2-00474-7, has any legal bearing on this case. " Judicial estoppel is an equitable doctrine intended to protect the integrity of the judicial process by preventing a party from gaining an advantage by asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." *Arkison,* 160 Wash.2d at 538, 160 P.3d 13. Factors to guide a court's application of judicial estoppel: (1) whether "a party's later position" is "clearly inconsistent with its earlier position"; (2) whether "judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled"; and (3) "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." The first criteria is met because Kitsap County's current position that case #14-2-00474-7 has bearing on this case, is clearly inconsistent with its earlier position that

[14] Worthington has only argued WestNET the Agency or Washington State is the real party of interest and subject to the PRA. This issue was brought up at the trial court **CP 729.**

case #14-2-00474-7 had no bearing on this case. The second criteria are met because the Court of Appeals for Division II, twice took "judicial acceptance that position. Once on September 25, 2015, and again on February 29, 2016, and ruled in Kitsap County's favor in both instances. The third criteria is met because Kitsap County would derive an unfair advantage by being able to change its earlier legal position argued to avoid a dismissal of the appeal of case #14-2-00474-7, COA # 463644[15], caused by the Washington State Supreme Court ruling overturning a previous ruling in this case. Clearly, it would be unfair to Worthington to allow Kitsap County to tell this court the two cases had separate parties and different issues and also had identical parties and issues. Appellate courts have the inherent discretion to decide claims of error not raised at trial. See Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005) even decide ones not raised by the parties if necessary to reach a proper decision on the merits. Alverado v. Wash. Pub. Power Supply Sys., Ill Wn.2d 424, 429, 759 P.2d 427 (1988). ("by using the term 'may, 'RAP 2.5(a) is written in discretionary, rather than mandatory, terms."); Obert v. Envtl. Research and Dev. Corp., 112 Wn.2d 323, 771 P.2d 340 (1989) ("the rule precluding consideration of issues not previously raised operates

[15] Worthington brought the issue up in trial. **CP 729**

only at the discretion of this court.") "RAP 2.5 is carefully worded so that it does not require the appellate court to review anything, or to avoid reviewing anything." "The rule is written in terms of what the appellate court may do, thus giving the appellate court broad discretion to determine the scope of review on a case-by-case basis. "2A Karl B. Tegland Wash. Prac., Rules Practice RAP 2.5 at 146 (7th ed. 2011). **Because** the COA panel made the rulings on this issue after the trial court briefing, it would serve the interests of justice to consider whether case #14-2-00474-7, COA # 463644, was judicially, collaterally estopped, and barred under the doctrine of res judicata from being used to estopp Worthington.

III. CONCLUSION

Worthington respectfully requests a reversal and remand to the trial court to apply the penalty phase of PRA to the Washington State drug enforcement agency WestNET.

Respectfully submitted this 6TH day of October, 2016.

BY John Worthington

John Worthington /Appellant
4500 SE 2ND PL.
Renton WA.98059

Declaration of Service

I declare that on the date and time indicated below, I caused to be served personal service a copy of the documents and pleadings listed below upon the attorney of record for the defendants herein listed and indicated below.

1. APPELLANT'S REPLY BRIEF

IONE GEORGE/WESTNET
614 Division Street MS-35A
Port Orchard, WA 98366

COA DIVISION II
950 Broadway, Suite 300
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

Executed on this 6TH day of October, 2016.

BY John Worthington

John Worthington /Appellant
4500 SE 2ND PL.
Renton WA.98059

Declaration and request for judicial notice by John Worthington

I, John Worthington declare under penalty of perjury, that in 2008 I made a public records request to the Washington State Patrol regarding the same nucleus of facts as the records request in this case. (Worthington v. Washington State Patrol 08-2-01985-1 (2008), 386976-II.) At that time the The Washington State Patrol insisted to Worthington and this court, that the U.S. Department of Justice had all the records in this case:

From: Gretchen.Dolan@wsp.wa.gov <Gretchen.Dolan@wsp.wa.gov>
Sent: Friday,February15,2008:1:13PM
To:worthingtonjw2u@hotmail.com
Subject: RE: PUBLIC DISCLOSURE REQUEST PD-08-1055-0028

Dear Mr. Worthington,

The Washington State Patrol has completed researching your below request. The WSP does not have any records pertaining to this investigation. Please contact the Department of Justice to obtain records regarding this incident.

Sincerely,

Gretchen Dolan
Washington State Patrol
Public Records Manager
PO Box 42631
Olympia WA 98504

From: Gretchen.Dolan@wsp.wa.gov <Gretchen.Dolan@wsp.wa.gov>
Sent: Tuesday, February 19, 2008 9:38 AM

To: worthingtonjw2u@hotmail.com
Subject: RE: PUBLIC DISCLOSURE REQUEST PD-08-1055-0028

Dear Mr. Worthington,

The entities you mention below are not part of the WSP. This employee is contracted to these entities, who maintain their own offices, their own organizational structure, their own services, and their own records. We do not have possession of these records in any way. If these were WSP records, or if they were in our possession, we would provide them to you or cite to a specific exemption under the Public Records Act RCW 42.56 as our justification for withholding them. However, in this case, we are not withholding anything as we do not have anything. I apologize if my original response did not properly explain the situation. Please feel free to contact me if you have any additional questions.

Sincerely,

Gretchen Dolan

Washington State Patrol
Public Records Manager
PO Box 42631
Olympia WA 98504

This response was proven to be a lie when Worthington obtained a memo from the WSP showing the WSP had in fact requested and obtained the documents Worthington requested, for the Washington State Office of financial management, in order to investigate Worthington's tort claim.

'To: Tracy Gurley. Washington State Patrol, Investigative Assistance Division

From: Detective Sgt. Carlos Rodriguez. West Sound Narcotics Enforcement Team

Cc:

Date 7/24/2007

RE: case W07-001 (John WORTHINGTON. Steve SARICH. etc.)

Enclosed find a copy of the above mentioned case file. As per my phone conversation with Amy Grayless, review of the file is **information only** at this time. The case is still actively being 'worked. **NONE** of the paperwork can be released to and/or reviewed by non- law enforcement departments at this time. Please note nothing has been redacted from the paperwork. Should you find it necessary for Risk Management and/or anyone else to review the documents, please contact me first. If this matter actually reaches a point where the documents must be released to Risk Management and/or Mr. Worthington's attorney, then: is a procedure that **MUST** be followed for them to obtained the paperwork associated to Naval Criminal Intelligence Service (N.C.I.S.) **CP 33**

As shown above, the WSP had the documents Worthington requested. The documents were sent to WSP on 7/24/2007. Worthington requested them on 1/22/2008. WSP responded on 2/15/2008. Had the WSP been truthful and responded to Worthington's public records request in good faith. **All the other public records cases including this case would never have been necessary**. WSP was the correct party all along. The other component entities in WestNET were contracted out to the WSP in the same manner in which the WSP components were contracted out to the DEA in the drug task force TNET shown above. (who maintain their own offices, their own organizational structure, their own services, and their own records)

This is a visual aide to how these drug task forces skirt the PRA. When you go after the member entity, it is a "separate office", "their own organizational structure", "their own services" and "their own records." When you go after the entity, they claim the entity does not exist. It is time to end the lies.

I, John Worthington declare under penalty under the laws of Washington state and the United Stated States, that the foregoing is true.

Executed on this 6TH day of October, 2016.

BY John Worthington

John Worthington /Appellant
4500 SE 2ND PL.
Renton WA.98059

APPENDICES

RE: PUBLIC DISCLOSURE REQUEST PD-08-1055-0028

Gretchen.Dolan@wsp.wa.gov

Fri 2/15/2008 1:13 PM

To:worthingtonjw2u@hotmail.com <worthingtonjw2u@hotmail.com>;

Dear Mr. Worthington,

The Washington State Patrol has completed researching your below request. The WSP does not have any records pertaining to this investigation. Please contact the Department of Justice to obtain records regarding this incident.

Sincerely,

Gretchen Dolan

Washington State Patrol
Public Records Manager
PO Box 42631
Olympia WA 98504
w/(360)753-5467
c/(360)951-9036
f/(360)753-0234

From: john worthington [mailto:worthingtonjw2u@hotmail.com]
Sent: Tuesday, January 22, 2008 10:05 AM
To: Webmaster - Pub Rec Reqts
Subject: PUBLIC DISCLOSURE REQUEST

Washington State Patrol
PO BOX42631
OLYMPIA, WA. 98504-2631
PUBLIC RECORDS COORDINATOR

1/22/08

RE: PUBLIC DISCLOSURE REQUEST PD-08-1055-0028

Gretchen.Dolan@wsp.wa.gov

Tue 2/19/2008 9:38 AM

To:worthingtonjw2u@hotmail.com <worthingtonjw2u@hotmail.com>;

Dear Mr. Worthington,

The entities you mention below are not part of the WSP. This employee is contracted to these entities, who maintain their own offices, their own organizational structure, their own services, and their own records. We do not have possession of these records in any way. If these were WSP records, or if they were in our possession, we would provide them to you or cite to a specific exemption under the Public Records Act RCW 42.56 as our justification for withholding them. However, in this case, we are not withholding anything as we do not have anything. I apologize if my original response did not properly explain the situation. Please feel free to contact me if you have any additional questions.

Sincerely,

Gretchen Dolan

Washington State Patrol
Public Records Manager
PO Box 42631
Olympia WA 98504
w/(360)753-5467
c/(360)951-9036
f/(360)753-0234

From: john worthington [mailto:worthingtonjw2u@hotmail.com]
Sent: Friday, February 15, 2008 5:38 PM
To: Dolan, Gretchen (WSP)
Subject: RE: PUBLIC DISCLOSURE REQUEST PD-08-1055-0028

Hello Gretchen,

Fred Bjornberg is paid by the state,he is a state employee in a state drug task force.
His records should be subject to the Washington State public disclosure act.
The Warrant was issued by a state judge,to a state drug task force West Net working with another state drug task force Tahoma narcotics enforcement team.

WestNET

Kitsap County Sheriff
West Sound Narcotics Enforcement Team

M E M O

To: Traci Gurley, Washington State Patrol, Investigative Assistance Division

From: Detective Sgt. Carlos Rodriguez, West Sound Narcotics Enforcement Team

CC:

Date: 7/24/2007

Re: Case W07-001 (John WORTHINGTON, Steve SARICH, etc.)

Enclosed find a copy of the above mentioned case file. As per my phone conversation with Amy Grayless, review of the file is **information only** at this time. The case is still actively being worked. **NONE** of the paperwork can be released to and/or reviewed by non-law enforcement departments at this time. Please note nothing has been redacted from the paperwork. Should you find it necessary for Risk Management and/or anyone else to review the documents, please contact me first. If this matter actually reaches a point where the documents must be released to Risk Management and/or Mr. Worthington's attorney, there is a procedure that **MUST** be followed for them to obtained the paperwork associated to Naval Criminal Intelligence Service (N.C.I.S.)

If you have questions or need assistance, please contact me at (360) 337-7064, extension 3729.

614 DIVISION STREET MS-37 • PORT ORCHARD, WASHINGTON 98366 • (360) 337-7064 • FAX (360) 337-5711

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JOHN WORTHINGTON,

Appellant,

-vs-

CITY OF BREMERTON, et al.,

Respondents.

NO. 46364-4-II

KITSAP COUNTY'S RESPONSE IN OPPOSITION OF MOTION TO CONSOLIDATE

I. RESPONSE

The two cases that are sought to be combined share neither identity of issues nor parties. Further, because the present action has been fully briefed and awaits only a ruling from this court, consolidation with another action at this time would be of no impact but for to cause delay. Accordingly, Kitsap County respectfully requests that Mr. Worthington's Motion for Consolidation be denied.

A. Issues and Parties between Cases are Not Shared

Initially, in the present cause, Mr. Worthington appeals the dismissal of his action filed against Kitsap County, a governmental entity. The issues addressed in the completed briefing

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consisted of substantive matters including: violation of a settlement agreement; statute of limitations; CR 12(b)(6) actions filed for improper purposes; etc.

To the contrary, the case with which Mr. Worthington seeks consolidation was filed against a multidisciplinary task force (WestNET), and the sole focus of that litigation was whether WestNET existed as a legal entity which could be sued.

Further discussion regarding the distinction and the lack of relevance between the two cases was set forth in the Brief of Respondent Kitsap County in the present cause, and is hereby adopted and incorporated by reference.

B. Consolidation Would Not Accomplish the Saving of Time or Expense

The present case has been fully briefed and was set for consideration by this court on January 13, 2016. There is no benefit to the defendant/respondent Kitsap County, and no time savings to consolidate this cause with another. Consolidation would do nothing but cause further delay in the resolution of this case, contrary to the purpose of RAP 3.3(b).

The Rules of Appellate Procedure are to be liberally interpreted to promote justice and to facilitate the decision of cases on the merits. RAP 1.2(a). Consolidation of a completed case with one that is just beginning does not serve this purpose; nor does consolidation of cases that arise from a shared factual basis, but which share neither issues nor parties.

II. CONCLUSION

Based upon the foregoing, Kitsap County respectfully requests that the Motion for Consolidation be denied.

///

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Respectfully submitted this 29th day of February, 2016.

TINA R.ROBINSON
Kitsap County Prosecuting Attorney

IONE S. GEORGE, WSBA No. 18236
Chief Deputy Prosecuting Attorney
Attorney for Respondent Kitsap County

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
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CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

John Worthington 4500 SE 2nd Place Renton, WA 98059	[ ] Via U.S. Mail [ ] Via Fax: [X] Via Email: [ ] Via Hand Delivery

SIGNED in Port Orchard, Washington this 29th day of February, 2016.

Batrice Fredsti

Batrice Fredsti, Legal Assistant
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
Port Orchard WA 98366
Phone: 360-337-4992

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOHN WORTHINGTON,

Appellant,

v.

CITY OF BREMERTON, et al.,

Respondents.

JOHN WORTHINGTON,

Appellant,

v.

WESTNET,

Respondent.

No. 46364-4-II &
No. 48590-7-II

ORDER DENYING MOTION TO CONSOLIDATE APPEALS AND TO ACCELERATE REVIEW

APPELLANT moves the Court to grant consolidation of the above-referenced appeals and to accelerate review. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Melnick, Sutton

DATED this 29th day of March, 2016.

FOR THE COURT:

Maxa, J.
PRESIDING JUDGE

Ione Susan George
Kitsap County Prosecutors Office
Ms 35A
614 Division St
Port Orchard, WA 98366-4681
igeorge@co.kitsap.wa.us

John Worthington
4500 SE 2nd Place
Renton, WA 98059

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JOHN WORTHINGTON,

Appellant,

-vs-

CITY OF BREMERTON, et al.,

Respondents.

NO. 46364-4-II

KITSAP COUNTY'S RESPONSE TO COURT'S QUERY RE: HOW SUPREME COURT DECISION IN 90037-0 AFFECTS APPEAL AND WHETHER STAY OF TRIAL COURT'S ORDER SHOULD BE LIFTED

I. ISSUE PRESENTED

How the Supreme Court decision in 90037-0 (*Worthington v. WestNET)* affects the present appeal (*Worthington v. Kitsap County)*, and whether the stay of the trial court's order should be lifted.

II. BRIEF ANSWER

Because the two cases do not share the same parties, and do not share the same legal issues, the decision of the Supreme Court in 90037-0 has minimal relevance to the pending appeal.

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III. PROCEDURAL HISTORY

A. Worthington v. WestNET (90037-0)

This action was based on a February 5, 2010, public records request regarding a January 12, 2007 raid against his residence. Worthington brought suit against WestNET, claiming that WestNET improperly responded to the request. Appendix A.[1]

The Superior Court dismissed the case, finding that WestNET was not an entity that existed for PRA purposes, and thus, Worthington had failed to state a claim against an existing legal entity. On appeal, this Court affirmed, finding that WestNET was not a separate legal entity subject to suit. *Worthington v. WestNET*, 179 Wn.App. 788, 320 P.3d 721 (2014), *reversed,* 341 P.3d 993 (2015).

The Supreme Court, however, determined that the record was insufficiently developed to determine WestNET's amenability to suit via a CR 12(b)(6) motion, as there remained a question of fact as to the actual functioning of WestNET independent of the terms of the interlocal agreement. *Id.* Accordingly, the Court of Appeals decision was reversed and the matter was remanded to the Superior Court where it remains for further litigation.

B. Worthington v. Kitsap County (present action)

In the present action, Worthington brought suit against Kitsap County, the City of Bremerton, the City of Poulsbo, the City of Port Orchard and the State of Washington, claiming that his February 5, 2010 public records request that was directed to Kitsap County (the same request that he claimed was directed to WestNET in the prior lawsuit), was improperly responded to. Appendix B. He further made claims accusing unidentified persons of altering

1 Appendix A is an excerpt from the Appellant's Opening Brief in Worthington v. WestNET, 43689-2-II.

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Kitsap County Prosecuting Attorney
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public records and sought to compel "WestNET Affiliate Jurisdictions" to comply with the open public meetings act and to impose penalties on unidentified members of the WestNET policy board. *Id.* However, neither "WestNET Affiliate Jurisdictions," "WestNET," or any individual were ever named parties to the lawsuit.

Kitsap County moved for dismissal pursuant to CR 12(b)(6) and for Imposition of CR 11 sanctions for the filing of a frivolous lawsuit. Appendix C. Mr. Worthington countered by filing a Special Motion to Strike Kitsap County's Motion to Dismiss and Motion for Sanctions under RCW 4.24, the anti-SLAPP statue. Appendix D.

Ultimately, the trial Court:

1. Granted the County's CR 12(b)(6) Motion for Dismissal for Failure to State a Claim;
2. Granted the County's motion for CR 11 sanctions;
3. Denied Mr. Worthington's anti-SLAPP motion;
4. Awarded the County $2,400.00 in attorney's fees and costs, and statutory fees in the amount of $10,000.00 regarding the anti-SLAPP motion; and
5. Sanctioned Worthington by awarding judgment in the amount of $5,000.00 to the County for the Plaintiff's CR 11 violations.

Appendix E, F, G.

The trial court further entered the following conclusions of law in support of the above rulings in the matter of *Worthington v. Kitsap County*:

1. Filing and/or pursuit of the present matter is barred by the settlement agreement between the parties on July 1, 2008.

2. Filing of this action violated the terms of the settlement agreement, and Plaintiff is equitably estopped from pursuing this action.

3. The one-year statute of limitations for Plaintiff's claim regarding the public records act began to run upon the County's release of records

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on March 26, 2010, and expired on March 26, 2011. This action was filed approximately three years after the expiration of the statute of limitations.

4. The plaintiff's violation of the terms and conditions of the Order Transferring Venue under Pierce County Superior Court Cause No. 11-2-13236-1 does not constituted [sic] legal grounds for dismissal of the present action but supports the imposition of CR 11 sanctions in that it is further evidence that the present action was not interposed for proper purposes, but instead for purposes such as harassment or to cause unnecessary delay.

5. WestNET is not a board or agency under the Public Records Act, and is not an entity subject to suit; similarly it is not a public agency subject to compliance with the Open Public Meetings Act.

6. Plaintiff Worthington does not have standing to file a criminal complaint.

7. Plaintiff's cause of action, which was filed in violation of the terms of his settlement agreement with the county, was not well grounded in law and was harassing in nature.

Appendix H. (Of note, Kitsap County was the only remaining defendant in the action when the Findings were entered and the County was dismissed from the case, *See* Response to Motion for Discretionary Review filed on behalf of Kitsap County under present cause on February 17, 2015.)

IV. DISCUSSION[2]

Other than the shared subject mater of the actions, that is, Worthington's February 5, 2010, public records request, the two cases have very little in common. Indeed their legal focus is quite distinct.

In the 2011 action, which has recently been remanded by the Supreme Court, the issue

2 In his response to the Court regarding this question, Mr. Worthington has filed many materials that are not of record with this Court or with the trial court. Such materials include email correspondence between the parties, including settlement offers and discussions, none of which are properly before this court. These materials are not part of the record, and should not be considered by this Court.

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presented has never gone beyond "is WestNET subject to suit?" As it was posed to the trial court in the CR 12(b)(b) motion, that question was answered solely within the parameters of the interlocal agreement that created WestNET. Now, with the direction of the Supreme Court's decision, the next step will be to re-address that question in the trial court after sufficient development of the factual record.

However, the question of whether WestNET is an entity subject to suit under the PRA is not a question that had any bearing upon the decision made by the trial court in *Worthington v. Kitsap County,* the case presently at hand. Though the *Worthington v. WestNET* appellate court decision was referenced in the trial court's decision in the case at hand, it was little more than a reference to the then-current status of the related case. It had no significance to the merits of Worthington's suit against the County.

The Superior Court's significant rulings were that Worthington's claims against the County were barred by a settlement agreement, were barred by the statute of limitations, and that his claims were interposed for improper purposes such as for harassment and delay and that his claims were not well grounded in fact or law.

Thus, the Supreme Court's remand of the matter in *Worthington v. WestNET* for further development of the factual record has no connection to the merits of Worthington's present appeal.

V. CONCLUSION

Worthington v. WestNET and *Worthington v. Kitsap County* are different cases with different parties dealing with distinct legal issues. The Supreme Court's decision in *Worthington v. WestNET* stands alone from any decision made or to be made in the present case.

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
(360) 337-4992 Fax (360) 337-7083
www.kitsapgov.com/pros

Respectfully submitted this 7th day of April, 2015.

TINA R. ROBINSON
Kitsap County Prosecuting Attorney

IONE S. GEORGE, WSBA No. 18236
Chief Deputy Prosecuting Attorney
Attorney for Respondent Kitsap County

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
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CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

John Worthington
4500 SE 2nd Place
Renton, WA 98059

[X] Via U.S. Mail
[ ] Via Fax:
[X] Via Email:
[ ] Via Hand Delivery

SIGNED in Port Orchard, Washington this 24th day of April, 2015.

Batrice Fredsti

Batrice Fredsti, Legal Assistant
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
Port Orchard WA 98366
Phone: 360-337-4992

TINA R. ROBINSON
Kitsap County Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366-4676
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Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts OFFICE HOURS: 9-12, 1-4.

April 9, 2015

Ione Susan George (via email)
Kitsap County Prosecutors Office
Ms 35A
614 Division St
Port Orchard, WA 98366-4681

John Worthington (via USPS)
4500 SE 2nd Place
Renton, WA 98059

CASE #: 46364-4-II
John Worthington, Appellant v. City of Bremerton, et al., Respondents

Mr. Worthington & Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

The stay of the trial court's judgment pending this appeal will remain in effect.

Very truly yours,

David C. Ponzoha
Court Clerk